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Case No. 96-

IN THE

SUPREME COURT OF THE

UNITED STATES

October 1996 Term

ROBERT CULP,
Petitioner
v
HAROLD HOOD and ROBERT J. DANHOF, (Retired) Judges of the Michigan Court of Appeals and JEANNE STEMPIEN, Wayne Circuit Judge and Acting Michigan Court of Appeals Judge,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Questions Presented

Whether a cause of action grounded upon provisions of Title 42 Section 1983 of the United States Code, charging the Respondents with violations of rights protected by the First, Fifth and Fourteenth Amendments to the Constitution of the United States are made moot by a decision of the Respondents that did not address the charges made in the 42 USC 1983 cause of action when the decision of the Respondents is denied leave to appeal by the Supreme Court of Michigan and this Court denied a Petition for a Writ of Certiorari directed to the Michigan Supreme Court.

Whether Petitioner's cause of action authorized by the provisions 42 U.S.C. 1983 is made moot when decisions of the federal courts never reached the merits of the questions, the

District Court deciding the matter should be dismissed because of judicial immunity and an absence of any rights in Petitioner and the United States Court of Appeals deciding the cause should be dismissed because of mootness.

Whether Petitioner's cause of action can be considered moot when allegations contained in the First Amended Complaint regarding the Pre-Hearing procedures of the Michigan Court of Appeals were never addressed on the merits.

Whether rules and customs regarding the issuance by United States Courts of Appeal of unpublished decisions are out of date and subject to abuse where computer retrieval of Courts of Appeal decisions has alleviated the problems the rules and customs regarding unpublished decisions sought to correct.

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IN THE SUPREME COURT
OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner, ROBERT CULP, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit of march 19, 1996, Amended Decision issued June 27, 1996, Petition for Rehearing and Rehearing En Banc denied July 30, 1996.

ADDITIONAL PARTIES TO THE PROCEEDINGS

This case was started against the Respondents on January 19, 1994 in the United States District Court for the Eastern District of Michigan. It sought, among others things to enjoin a proceeding in the Michigan Court

of Appeals which was a judicial review of an administrative decision by the Michigan Workers' Compensation Appeal Board. The other parties to that administrative determination were named as parties in the Complaint because each of them had an interest in opposing the seeking of injunctive and declaratory relief. The District Judge, sua sponte, dismissed these parties at the hearing on Petitioner's Motion for a Preliminary Injunction and these parties have not participated in any of the proceedings since being dismissed sua sponte. They appear as parties in Case No. 94-1460; cert. dn. 115 S. Ct. 1958, rhg. dn. 115 S. Ct. 2635 (1995), a seeking of a writ of certiorari from this Court from the decision of the Respondents of May 19, 1994, leave to appeal denied by the Michigan Supreme Court on November 30, 1994.

OPINIONS BELOW

The opinions and decisions below are the unpublished opinion of the Michigan Court of Appeals of May 10, 1994, the unpublished Order Granting Defendants Motion to Dismiss or for Summary Judgement of the United States District Court for the Eastern District of Michigan of September 8, 1994, The Order Denying Plaintiff's Motion for Reconsideration by the United States District Court for the Eastern District of Michigan, the unpublished Opinion of the United States Court of Appeals for the Sixth Circuit of March 19, 1996, the unpublished Amended Opinion of the United States Court of Appeals for the Sixth Circuit of June 27, 1996 and the unpublished Order Denying Rehearing En Banc of the United States Court of Appeals for the Sixth Circuit of July 30, 1996.

JURISDICTION

This is a cause of action that was brought under the authority of Title 42, Section 1983 of the United States Code and sought injunctive and declaratory relief regarding the treatment given and about to be given by Respondents to the Petitioner's judicial review of a worker's's disability compensation administrative determination, and, additionally, regarding a practice of the Michigan Court of Appeals and all Michigan Court of Appeals panels accepting secret Pre-Hearing reports prior to submission of for decision.

The worker's disability compensation case of the Petitioner sought permanent and total disability benefits for a statutorily defined condition of loss of industrial use of the

legs, MCLA 418.361(3)(g). It was Petitioner's contention during the administrative proceeding that it was conclusively established that he had entitlement to these benefits. The contention was based upon testimony of an orthopedic surgeon retained for multiple examinations and reports by several employer interests and produced to give evidence by the last of Petitioner's numerous employers. This expert medical witness testified that Petitioner had no useful function of his lower limbs and that this condition was caused by a fall of 25 feet to a concrete floor that caused multiple fractures of both legs, both feet, and derangement of both knees, and strenuous work as a millwright following recuperation from the injuries caused by the fall.

Entitlement to permanent and total

disability benefits for loss of industrial use of both legs is established at the time such a condition exists. The time at which this condition was shown to exist was in 1977 when the orthopedic surgeon described above testified as to when he first concluded that the condition existed. The motivation for the last employer producing this testimony was that it established entitlement to the broadest, most compensated, longest continuing without reduction for aging, disability weekly benefits long before Petitioner was ever employed by that employer, thus exempting that employer from any liability.

The testimony produced as here described was unopposed. The Second Injury Fund produced a witness who concluded that Petitioner was not fit for even wheelchair assisted employment. He concluded the cause

of such disability was not related to employment but this testimony was not believed by any administrative fact finder and the courts have no fact finding function in workers' disability compensation cases.

The positions of the defendants, other than the last employer, were essentially that Petitioner did not become disabled as found and described by the orthopedic surgeon presented as a witness by the last employer while he was in their employ so the liability for his disability belonged to some other employer.

The Magistrate of the Michigan Worker's Disability Compensation Bureau, by a decision issued October 16, 1985, ruled that plaintiff was not permanently and totally disabled, that he was totally disabled because of work occurrences not attributable to a

single event and that because such was the cause of his total disability, Petitioner was entitled to weekly benefits from his last employer.

Petitioner and the last employer each sought administrative review from the Michigan Workers's Compensation Appeal Board.

Incredulously, in a two to one decision, issued December 23, 1991, the Workers's Compensation Appeal Board found Petitioner only partially disabled and entitled to partial disability benefits from the last employer. The dissenting member of the Michigan Workers' Compensation Appeal Board found Petitioner to be permanently and totally disabled because of loss of industrial use of both legs in accord with the unopposed testimony of the orthopedic surgeon presented by the last employer.

The Workers' Compensation Appeal Board made no determination as to the extent of entitlement to weekly benefits of the Petitioner for partial disability.

The Petitioner and the last employer each sought leave to appeal to the Michigan Court of Appeals. The Michigan Court of Appeals denied the Application for Leave to Appeal of the last employer. It granted leave to appeal to the Petitioner, but appeal was limited to a determination of how to determine the extent of Petitioner's entitlement to partial disability benefits.

The last employer sought leave to appeal from the Michigan Supreme Court. Petitioner sought a By Pass Application for Leave to appeal from the Michigan Supreme Court.

When Petitioner filed his by pass

application for leave to appeal, it was opposed by the last employer who contended that by unpublished decisions of the Michigan Court of Appeals, copies of ten such decisions being attached to its opposition brief, the definition of partial disability had been changed and that because of these unpublished decisions the determinations of partial disability by the Workers' Compensation Appeal Board was proper. One of these decisions was an unpublished opinion of the Michigan Court of Appeals in the case of Sobotka v. Chrysler Corp.

The tortuous path of the case of Sabotka v. Chrysler is related in a decision of the Michigan Supreme Court Sobotka v. Chrysler Corp. 447 Mich 1, 9-15 (1994). This case, particularly in the lead opinion of Justice Boyle, also shows that from at least 1986 the

Michigan Court of Appeals was consistently issuing unpublished, peremptory orders on employers' Applications for Leave to Appeal from decisions of the Michigan Workers' Compensation Appeal Board which sought to impose an erroneous definition of partial disability and an erroneous method of calculating weekly compensation benefits and that the Michigan Court of Appeals in such cases never on its own motion issued a published decision, even though there were two extensive opinions issued in Sobotka v. Chrysler Corp. Michigan Court of Appeals proceedings. The final Michigan Court of Appeals decision in that case is reported in 198 Mich App 445 (1993) on the grant of a motion for publication filed on behalf of Chrysler Corp.

Although I, as counsel for the

Petitioner, have had considerable experience in Michigan workers' disability compensation law and practice, until I received copies of ten unpublished decisions by the Michigan Court of Appeals, I was unaware of the program of the Michigan Court of Appeals which sought by unpublished decisions, primarily peremptory orders, to change the law as to the definition of partial disability and how partial disability weekly benefits were calculated. However, upon receipt of the last employer's opposition brief to my seeking a by pass leave to appeal to the Michigan Supreme Court, the writing was on the wall as to why judicial review was limited to considering how partial disability benefits were calculated and to what the determination of the Michigan Court of Appeals would be. Thus, on January 19. 1994, I started this cause of action in the

United States District Court for the Eastern District of Michigan.

At the hearing on Petitioner's Motion for a Preliminary Injunction, on February 1, 1994, the appendices of the parties in Sobotka v. Chrysler Corp. supra , which was then pending in the Michigan Supreme Court at the time, February 1, 1994, were submitted into evidence. They contained records from numerous cases of the Michigan Court of Appeals which, by peremptory, unpublished, erroneous orders, were a part of a program of the Michigan Court of Appeals to change the definition of partial disability and how weekly benefits for partial disability were to be calculated, grossly reducing the lawful obligations of employers and their insurers.

The Michigan Supreme Court directed that the last employer's seeking of leave to appeal

from the denial of leave by the Michigan Court of Appeals be remanded for full consideration to the Michigan Court of Appeals. Petitioner's by pass application for leave to appeal to the Michigan Supreme Court was denied and a motion for reconsideration seeking only the same full review as was granted the last employer was also denied.

On May 10, 1994, the Michigan Court of Appeals issued an unpublished decision in the consolidated appeals. Briefs on behalf of Petitioner to the Court of Appeals and the opening statement on oral argument to the Respondents sought to present all of Petitioner's grievances. The briefs were struck and the request for a meaningful oral argument on behalf of Petitioner and his real grievances was denied.

On September 8, 1994, the United States

District Court for the Eastern District of Michigan issued an order-opinion which, on the basis of judicial immunity, and in a footnote, on the basis of no rights in the Petitioner owed by Judges of the Michigan Court of Appeals to Petitioner because his only method to acquire Michigan Court of Appeals jurisdiction was by leave to appeal which was discretionary, dismissed Petitioner's Civil Rights cause of action against the Respondents.

On August 30, 1994, the Michigan Supreme Court, by a majority of concurrences, reversed the Court of Appeals decision in Sobotka v. Chrysler Corp. supra.

On September 17, 1994, a Motion for Reconsideration on behalf of Petitioner was filed in District Court, citing the decision of the Michigan Supreme Court in Sobotka.

supra. It was denied on October 27, 1994.

An Application for Leave to Appeal from the unpublished decision of the Michigan Court of Appeals of May 10, 1944 was sought by Petitioner from the Michigan Supreme Court. It was denied on November 30, 1994. A Petition for a Writ of Certiorari was sought from this Court to review the Michigan judicial proceedings involving Petitioner's workers' disability Compensation claim. This Petition was denied by this Court; Culp v. Wismer & Becker, 115 S. Ct. 1958 lv. dn; 115 S. Ct. 2655, rhg. dn (1995).

This 42 USC 1983 case was argued to the United States Court of Appeals for the Sixth Circuit on October 2, 1995 before a panel of Circuit Judge Boggs, Senior Circuit Judge

Jones and District Judge Coffman. An unpublished opinion based upon mootness because of the decision of the Respondents, the discretionary actions of the Michigan Supreme Court in denying leave to appeal and of this Court in denying a Petition for a Writ of Certiorari, Culp v. Wismer & Becker, supra, was issued March 19, 1996. An Amended Opinion was issued on June 27, 1996 with no meaningful changes in its reasoning. A denial of a rehearing and a rehearing En Banc. on a timely filed Petition for Rehearing, was filed on July 30, 1996.

Jurisdiction of this Court is provided by the Title 28 Section 1254 of the United States Code.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

Constitution of the United States
Amendment I

> Congress shall make no law...abridging the free of speech ... or the right of the people...to petition the Government for a redress of grievances.

Amendment V

> No person shall ... be deprived of life, liberty or property, without due process of law.

Amendment XIV, Section 1

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizen of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within i t s jurisdiction the equal protection of the law.

Statutes of the United States
Title 42, Section 1983; 42 U.S.C. 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

United States Court of Appeals Rules--Sixth Circuit, Rule 24(A)

> The following criteria shall be considered by panels in determining whether decisions will be designated for publication in the Federal Report:
>
> (I) whether it establishes a new rule of law, or alters or modifies an exiting rule of law, or applies an established rule to a novel fact situation;
>
> (ii) whether it creates or resolves a conflict of authorities either within the circuit or between this circuit and another;
>
> (iii) whether it discusses a legal or factual issue of continuing public interest.;
>
> (iv) whether it is accompanied by a concurring or dissenting opinion;

(v) whether it reverses the decision below, unless:
    (a) the reversal is caused by an intervening change in law or fact, or,
    (b) the reversal is a remand (without further comment) to the district court of a case reversed or remanded by the Supreme Court;
(vi) whether it address a lower court or administrative agency decision that has been published; or,
(vii) whether it is a decision which has been reviewed by the United States Supreme Court.

Michigan Court Rules of 1985, Rule 7.215(B)
MCR 7.215 (B)

(B) Standards for Publication. A court opinion must be published if it:
    (1) establishes a new rule of law;
    (2) construes a provision of a constitution, statute, ordinance, or court rule;
    (3) alters or modifies an exiting rule of law or extends it to a new factual context;
    (4) reaffirms a principle of law not applied in a recently reported decision;
    (5) involves a legal issue of continuing public interest;
    (6) criticizes existing law; or
    (7) creates or resolves an apparent conflict of authority, whether or not the earlier opinion was published.

(C) Precedent of Opinions

(1) An unpublished opinion is not precedentially binding under the rule of stare decisis. A party who cites an unpublished opinion must provide a copy of the opinion to the court and to opposing parties with the brief or other paper in which the citation appears.

STATEMENT OF THE CASE

The chronological history of this case has been set out in the Statement of Jurisdiction.

The issues presently raised concern as to when a cause of action becomes moot; which brings to consideration whether there is a "live dispute". This will require examination as to whether what has been put to question by Petitioner's cause of action has been resolved, or, if not resolved, is there any principle of law which shields the Respondents from the exercise of judicial authority.

Our argument will show that there is a "live dispute"; that there never has been any resolution of the challenges as to the color

of law, federal rights denying conduct of the Respondents and that denying Petitioner the opportunity of establishing the wrongs done to him by Respondents and granting him declaratory and injunctive relief has been accomplished by the use of specious reasoning.

We contend that the use of unpublished decisions, by both state and federal appellate courts, in this litigation, has been abused and that there presently exists a need for rule changes regarding the issuance of unpublished appellate decisions.

The basis for federal jurisdiction is contained in the Civil Rights Acts and particularly Title 42, Section 1983 of the United States Code; 42 U.S.C. 1983.

ARGUMENT

The Petitioner's cause of action stated facts as to how he was treated by Respondents, Judges acting on his case in the Michigan Court of Appeals, and by amendment to his initial pleading, how his cause of action would be treated in the future because of a universally applied secret submission to Court of Appeals Judges in the form of a pre-hearing report. For these claimed color of law deprivations, Petitioner sought only injunctive and declaratory relief.

At the hearing on Petitioner's Motion for a Preliminary Injunction, the District Judge, sua sponte, dismissed as parties all of the Defendants in the Petitioner's worker's disability compensation case then on judicial

review before the Respondents. There were seventeen employers, each with their insurer and each had an interest in maintaining and continuing the judicial review before the Respondents.

That interest led me to believe that they were parties and entitled to participate. None the less, the District Court dismissed them as parties and thereafter granted the Respondents' Motion to Dismiss and for Summary Judgment. The stated basis for dismissal was judicial immunity and, by footnote, that because Michigan Court of Appeals Jurisdiction was acquired by the exercise of discretion in granting limited judicial review, Petitioner had no rights at all.

The judicial immunity basis is grossly unsound. Mitchum v Foster 407 U.S. 225; 925 Ct. 2151; 32 L Ed 2d 705 (1972), Pulliam v

Allen, 466 U.S. 522 104 S. Ct. 1970; 80 L Ed 2d 565 (1984). If a remedy other than damages is sought, judicial immunity is not a bar to a 42 U.S.C. 1983 action.

The footnote reason based on the remedy being discretionary does not give rise to unfostered rights in the judiciary after discretion is exercised, with no State or Federal Constitutional limitations nor limitations imposed by the oath of office and the obligations of judicial integrity.

It is to be noted during the pendency of this case, both in the District Court and in the Sixth Circuit Court of Appeals, that by a programs of longstanding (since 1986 as best we can tell), the Michigan Court of Appeals, on applications for Leave of Appeal filed on behalf of employers and their insurers or on behalf of self insured employers, had been

issuing unpublished, peremptory orders directing the Worker's Compensation Appeal Board to apply on erroneous standard of disability and an erroneous standard of calculating weekly benefits. This was shown by examples of such unpublished, erroneous, peremptory orders introduced in the District Court in exhibits that were the Michigan Supreme Court appendices of the parties in the case of Sobotka v. Chrysler Corp., supra. The District Court was also given a list of fourteen cases in the Michigan Supreme Court that were being held in abeyance sending decision in Sobotka, supra, in the Michigan Supreme Court. They were all Applications for Leave to Appeal on behalf of employees in worker's disability compensation cases, for Sobotka v. Chrysler Corp., supra, was a one issue case and there are no known Michigan

Court of Appeals decisions during that time on that one issue that followed the established law that established proper compensation entitlement.

What was shown by the above described materials was that for at least eight years all of the fully active Judges of the Michigan Court of Appeals were repeatedly participating in a program that by unpublished, peremptory, erroneous decisions, sought to materially reduce proper payment of compensation benefits by forcing a patently erroneous definition of partial disability and a patently erroneous method of calculating weekly benefits on the Worker's Compensation Appeal Board. The Michigan Supreme Court opinion in Sobotka v. Chrysler Corp., supra showed seven instances in addition to the four Sobotka instances of such a program. The cases held in abeyance by

the Michigan Supreme Court showed another fourteen instances and others of like identity were revealed in the Supreme Court appendices of the parties in Sobotka v. Chrysler Corp. The situation of the Petitioner is revealed as a Michigan Court of Appeals' limitation of his seeking of judicial review to fit his compensation claim into the nefarious program.

Calling what was revealed to the District Court and the Sixth Circuit Court of Appeals a "program" of the Michigan Court of Appeals is an attempt at being politically correct. What it patently was and continued to be at least from 1986 to 1994 and the decision in Sobotka, supra, was repeated occurrences of judicial decisions being fixed. By either term, the situation was one that reeked malodorously.

If the Respondents had to respond to charges supported by such evident facts all

taken from the records of the Michigan Supreme Court, they would be hung out to dry and every regularly sitting Michigan Court of Appeals Judge that served from 1986 to 1994 would be similarly implicated and endangered.

Watergate was one occasion of burglary. Here, there are about 30 instances where it is shown that injured workmen were robbed of their rights to compensation benefits and the evident probability of such instances being multiplied upon full investigation is most significant. Woodward and Bernstein, The Washington Post, The National Enquirer, The Star could find that their past revelations would pale with such a comparison.

The District Court chose judicial immunity as the method that would circumvent even an answer, but would most assuredly prevent a decision on the merits. Such a

choice is shown to be meritless, Mitchum v. Foster, supra, Pulliam v. Allen, supra. The United States Court of Appeals for the Sixth Circuit chose mootness.

A cause of action is moot when there is no longer a live dispute, Powell v. McCormack 359 U.S. 119, (1969). This requires examination as to when and where the contest between the Petitioner was resolved.

The Court of Appeals for the Sixth Circuit points to the decisions of the Michigan Court of Appeals, the Michigan Supreme court in denying leave to appeal and this Court denying certiorari as causing mootness.

The entire unpublished opinion of the Michigan Court of Appeals is reproduced in the appendix. It does not decide, nor even mention the challenges made by Petitioner's 42

U.S.C. 1983 claim. The are almost treated as if they were non-existent.

An area of peculiarity in the Michigan Court of Appeals 's opinion that is of pertinence to Petitioner's Civil Rights Cause against Respondents is that the opinion does not mention the limitations placed upon Petitioner's judicial review. What is related would promote the belief that Petitioner and the last employers, Wismer and Becker, each had been grated a right of full judicial review when, in truth, the last employer had a right to full review, but Petitioner was limited to making contentions only regarding the issue of the choosing of the Michigan Court of Appeals (how partial disability benefits were calculated); issues regarding which no party had made any contentions administratively and for which there was no

authority presented to the Michigan Court of Appeals by way of a copy of any unpublished decision of the Michigan Court of Appeals, MCR 7.215 (c) (1). The failure to disclose the limitations court placed on Petitioner's judicial review and the preparing of the opinion to make it appear that both Appellants had a full and equal right of judicial review, is a tacit admission by the Respondents that the portion of Petitioner's 42 U.S.C. 1983 cause that claimed the Michigan Court of Appeals and the Respondents denied him equal protection of the law and due process of the law was and is correct.

A review of the Michigan Court of Appeals' opinion discloses that only by a failed attempt at misleading that supports Petitioner's 42 U.S.C. 1983 contentions, has the Michigan Court of Appeals given my

considerations to the issues of the Civil Rights cause of action that has been the subject of this action in federal courts.

However, if we hypothetically assume that the decision of the Michigan Court of Appeals considered and decided all of the issues of Petitioner's 42 U.S.C. 1983 cause of action, and decided all issues against the Petitioner, thus being the cornerstone to the Sixth Circuit Court of Appeals' ruling that denial of leave to appeal by the Michigan Supreme Court and denial of certiorari by this Court makes Petitioner's 42 U.S.C. 193 cause of action moot, there is a critical flaw to such reasoning. The cornerstone to such a conclusion is that the Respondents are the creators of the cornerstone. They can create their own judicial immunity by deciding that they did not make color of law in judgments

upon the rights of Petitioner. Any conclusion that Respondents can create the cornerstone to a proposition that would free them from the scrutiny of a 42 U.S.C. 1983 proceeding is asinine.

Additionally, it is evident that unwarranted significance is being placed upon denial of leave to appeal and denial of certiorari. It is Hornbook law that in instances where there is no dissent to a denial of certiorari such a denial means no more than fewer than four members of this Court thought it should be granted, Maryland v Baltimore Radio Show, 338 U.S. 912 (1950); Hughes Tool Co. V Transworld Airlines, 409 U.S. 363, 34 L. Ed 2d 707 (1973); Brown v Allen, 344 U.S. 443, 97 L. Ed 2d 469 (1953). Prior to the adoption of the Michigan Constitution of 1963 the method of obtaining

judicial review of an administrative decision in a worker's disability compensation case was to seek a writ of certiorari from the Michigan Supreme Court. There is now an intermediate appellate court in Michigan, but seeking review in compensation cases from the Michigan Supreme Court is done as it always has been done, but with a different title on the pleadings. The title is now "Application for Leave to Appeal". The denial of leave to appeal should have the same significance as denial of certiorari.

The decision of the Michigan Court of Appeals neither considered or resolved any of the Civil Rights claims of the petition although phrasing in the opinion relates favorably to the soundness of this 42 U.S.C. 1983 cause of action. Hypothetically, assuming that the Michigan Court of Appeals,

through the actions of the Respondents, could consider and decide the issues in Petitioner's Civil Rights claim would allow the Respondents to create there own immunity and defeat the purpose of 42 U.S.C. 1983 and its application to the judiciary as determined by this Court in Mitchum v Foster, supra.

Neither the District Court nor the Sixth Circuit Court of Appeals has found any valid reason for affording protection to the Respondents and to other Judges of the Michigan Court of Appeals that by their participation in numerous other cases are similarly situated.

There is another facet to Petitioner's Civil Rights claim that is of significant importance, yet has received little consideration of consequence by any of the members of the judiciary acting in this case.

This part of Petitioner's Civil Rights cause concerns a practice of all panels of the Michigan Court of Appeals wherein they receive secret submissions suggesting a result prior to consideration. This practice of receiving secret submissions is well known; it was the theme of a best selling novel written by the late United States Administrative Law Judge, William J. Coughlin, Death Penalty, HarperCollinsPublishers, 1992. It is a veiled account of the occurrence of the deals of Michigan Court of Appeals Judge Jerome Bronson who died by his own hand after being charged with attempting to sell the report and his influence to a lawyer whose client had a substantial tort judgement against a very collectible defendant that was bing reviewed by the Michigan Court of Appeals. Similar alleged conduct by Judge Richard Maher is the

likely cause of his premature retirement to avoid proceedings before the Michigan Judicial Commission, such conduct being cause in disbarment proceedings for this judge and a practicing lawyer.

The pre-hearing procedures of the Michigan Court of Appeals are flagrantly in violation of the holding of this Court in the Morgan Cases; Morgan v United States 298 U.S. 468 (1936); 304 U.S. 1 (1938) and the Michigan Supreme Court, Dation v Ford Motor Co., 314 Mich 152 (1946). The Michigan Supreme Court accepted the question of the lack of Constitutional rights observances by the Michigan Court of Appeals in the case of Williams v Grossman, lv grt. 399 Mich 888 (1977) but failed to consider the issue while giving the Plaintiff-Appellant a cause of action against the Defendant-Appellee that had

been denied below; on a basis for which there had no contention made in any forum in that case, Williams v Grossman, 409 Mich 67 (1980). Thus the Michigan Supreme Court, sua sponte, created new law regarding limitations of action in decedents' estates giving the litigant who raised the issue of the Constitutionality of Michigan Court of Appeals pre-hearing procedures a victory, but failing to decide whether the Michigan Court of Appeals pre-hearing procedures can stand Constitutional muster as determined in the Morgan cases, supra and Dation v Ford Motor Co., supra.

It is to be noted that all of the determinations of the Michigan Court of Appeals which we complain are unpublished and all of the decisions of the United States Court of Appeals of which we complain are

unpublished.

There was a time, not too long ago, when concerns regarding the volume and expense of printed material was a valid reason for limiting publication of some appellate decisions. That use of unpublished decisions kept some decisions from public scrutiny was a necessary evil.

Now, when a large computer manufacturer regularly displays in its television advertisements a conversation of an Iberian scholar with a friend that with computer equipment he now has access to all of the contents of the library of Indiana University the need to suffer the evil of absence of public scrutiny is no longer necessary.

The use of unpublished appellate decisions sends a message from the decision makers. A view of the standards for

publication for the United States Court of Appeals for the Sixth Circuit, United States Court of Appeals Rules--Sixth Circuit, Rule 24(a), supra, and the Michigan Court of Appeals, Michigan Court Rules of 1985, Rule 7.215 (B); MCR 7.215 (B), supra, are significantly different in content. Sixth Circuit Rule 24(a) leaves publication to the discretion of the deciding panel. Michigan Court Rules have strict standards, but applying the seven expressed standards is a direction the Michigan Court of Appeals totally ignores for each of the seven express standards would require publication of the Michigan Court of Appeals opinion in this case.

When viewed by the practice in this case the standards of publication applied are essentially the same--We keep it from public

scrutiny if that's the way we feel about it.

Almost inherent in an opinion being withheld from publication is a tacit message that this case is trivial. There is nothing trivial regarding the integrity of the judiciary. This case is not trivial. It is vital to the protection of the rights of an injured workman, who, to this point, has had his fair entitlement to proper compensation weekly benefits thwarted by unconstitutional acts of the Michigan Court of Appeals and his being so deprived is but one example among scores of other similar situations.

Here, the message which is being sent by the unpublished opinions is more than this case is trivial. By giving the appellate opinion the appearance of triviality the message is also that those who chose non-publication want to have their actions to

continue to be hidden from public scrutiny.

This court has rule making power that can give public scrutiny to all opinions of the federal appellate courts without unduly adding to the volume and expense of printed material. Require that all federal appellate court opinions be published to be retrievable by computer and let printed publication standards remain the same. Westlaw and Lexis should be co-operative in this regard. While such action would have no direct effect upon publication of state appellate court opinions, such action would be instructive and influential.

There are three Respondents who wish this Court to issue a simple denial of the writ of certiorari to keep their acts from public scrutiny. There are fourteen United States Court of Appeals Judges, a Senior Circuit

Judge, and a District Judge who wish to keep their acts from public scrutiny. There are twenty-one appellate judges who have furtively slipped a dagger into the vitals of equality who wish a denial of certiorari to occupy one line under the title of this case in the United States Supreme Court Reports.

E tu Rehnquist? Stevens? O'Connor? Scalia? Kennedy? Souter? Thomas? Ginsburg? Breyer?

RELIEF

WHEREFORE, Petitioner prays that a writ of certiorari issue directed to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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